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Two-thirds of this proposed tax on personal property is to be paid to the treasurer of the commonwealth, and the remaining one-third is to be retained for the use of the town. Out of the proportion going to the State, are to be deducted the expenses of assessing and collecting, even to the ratable share of the expenses of the tax commissioner's department. In addition to this, the State is also to retain such an amount as the legislature deems necessary for State purposes in lieu of a State tax. The remainder is to be distributed to the various cities and towns, one-half in proportion to their respective real estate valuations, and one-half in proportion to their respective population as defined by the last preceding State or federal census.

Such are the provisions of the proposed law. It is an attempted solution of the present day difficulty of taxing personal property by assessors locally elected, a good example of extreme centralization, carried to its logical conclusion with assessors appointed by the tax commissioner and paid by the State.

ROBERT ARGYLL CAMPBELL.

Taxation—Pending Constitutional Revisions and Amendments¹. Several of the States have passed measures looking toward a change in their constitutions concerning the subject of revenue and taxation. Some would accomplish this end by a general revision of the constitution, others by changes in the organic law as it now stands. Considered from the point of revenue and taxation alone, an amendment often times means more than a revision, for a constitution may be revised and adopted by the people and the clauses relating to taxation simply carried over from the old to the new, while it often happens that a single amendment changes the whole system of taxation, and materially affects no other part of the constitution.

No important constitutional revisions are before the people at the present time. Connecticut has just voted down an amendment to the constitution in the form of a revision, but in the proposed constitution no attempt was made to change the simple clause stating that the property of no person is to be taken for public use without just compensation, which has formed a part of the Declaration of Rights of Connecticut since 1818 (art. 1, sec. 2). The question of calling a constitutional convention in Maryland was submitted to a vote of the people last November, but was not approved. The present constitution of Michi-

¹ These amendments will all be voted on in 1908.

gan states that in 1866 and every sixteen years thereafter the question of a general revision of the constitution is to be submitted to the electors of the State. This does not mean that the constitution cannot be revised at any other time. The people had the privilege of voting for or against the proposed revision in 1898, but did not deem that the constitution needed revision at that time. During the last session of the legislature, however, provision was made for holding a constitutional convention and the delegates have since been elected and are at present diligently considering the provisions which are to form the new proposed constitution. Numerous sections relating to taxation appear among the proposed provisions, but nothing definite can be stated concerning their adoption at the present time.

When we turn from proposed revisions and revisions now being made, to the question of amendments, we find a much more fertile and clearly defined field. Each proposed amendment shows a real desire for a change in the tax system, aims to remedy defects and make the constitution more in harmony with present day beliefs and demands.

The important amendments proposed and now before the people are found in the newer States, and with one exception, Wisconsin, in the States west of the Mississippi. This fact seems due to three causes; first, the tax systems of certain of the western States are not so fully developed, so well crystallized and so bound up in court decisions as the systems of many of the eastern States; second, there is a more radical element in the west not afraid to attempt new things; and third, the States of the west are aiming to accomplish by constitutional provisions what some of the eastern States have accomplished by statutory law.

A more minute and detailed study will show the movement and tendency at the present time. Resolutions have been introduced in the California legislature providing for the repeal of the remnant of the mortgage tax law, for the separation of the sources of State and local revenue, for certain modifications in the duties of the board of equalization, and for a tax on quasi-public and certain other corporations. Missouri also has an amendment pending, considering the separation of the sources of State and local revenue, and providing for the establishment of local option for counties and municipalities. In Missouri, in addition to this, there are two minor amendments relating to taxes for road and bridge purposes. If the amendment offered in South Dakota is approved by the people, it will mean that the State will have an entirely new set of constitutional clauses relating to taxation, which are much more general than the existing law. The resolution intro-

duced in Washington would repeal four sections of specific clauses and substitute one section composed of general provisions, in their places. In Minnesota three amendments are before the people for consideration, one relates to the exemption of church property from taxation, another to the levy of a tax for road and bridge purposes, and a third to the levy of a tax to pay damages to growing crops from hail and wind. The amendment proposed in Montana deals with the rate of taxation for State purposes, and the one in Utah to the rate of taxation for general State purposes, for district school and for high school purposes. Texas and Wisconsin each have amendments concerning a tax for roads and bridges, and, in addition, Texas has an amendment providing for the maintenance and support of the public free schools of the State, and Wisconsin for the levy of a tax on incomes, privileges and occupations.

Two constitutional amendments relating to revenue and taxation are pending in California at the present time. One deals with the repeal of section 4 of article 13, relating to the taxation of mortgages. Section 5, which states that every contract by which a debtor is obligated to pay any tax on money loaned or on any mortgage, is to be null and void with regard to the interest, and the tax or assessment was repealed by a vote of the people in November, 1906. Section 4 still remains and states that mortgages are to be taxed as an interest in the real estate and that each party to the mortgage is to pay taxes on his respective interest, or, if the owner of the security pays the tax on the entire property, the part that should have been paid by the mortgagor is added to the debt and if the mortgagor pays the taxes on the interest of the mortgagee, it is to be considered as a payment on the debt secured. California was the originator of this plan, and, although it was adopted by other States, California is the only one to retain it for any length of time. A law passed in 1907 (c. 368, sec. 1) permits contracting acts, but even before that time court decisions had practically annulled the law and made it similar to the plan adopted in Massachusetts, Wisconsin, and several other States where the debtor and creditor may enter into a contract concerning the payment of the taxes. If this proposed amendment repealing section 4 is favorably considered by the people it will mean the end of the California system as provided by the constitution.

The other amendment pending in California relates to the question of the separation of the sources of State and local revenue and to the taxation of public service and other corporations for the benefit of the State. The general provisions relating to the separation of the sources of State and local revenue is not new. The present Virginia constitution,

adopted in 1902, contains a provision which reads as follows: "Nothing in this constitution shall prevent the general assembly after the first day of January, 1913, from segregating for the purposes of taxation, the several kinds or classes of property so as to specify and determine upon what subjects, State taxes, and upon what subjects, local taxes may be levied" (Art. 13, sec. 169). The recent constitution adopted in Oklahoma has a similar provision which provides that the State may select the subjects of taxation, and levy and collect its revenues, independent of the counties, cities, or other municipal subdivisions.

The proposed amendment in California is much more specific. It states just what taxes are to be levied for State purposes, just what taxes are to be levied for local purposes, and specifies the exact rate on certain classes and objects. The State revenue is to be obtained from corporations and public utilities, and all other property is to be assessed in the locality where it is situated, in the manner prescribed by law. All railroads, including street railways, whether operated in one or more counties; sleeping car, dining car, drawing-room car, and palace car companies; refrigerator, oil, stock, fruit, and other car loaning and other car companies operating upon railroads in the State; companies doing express business on any railroad, steamboat, vessel or stage line in the State; telegraph and telephone companies; companies engaged in the transmission or sale of gas or electricity; insurance companies, banks, banking associations, savings and loan societies, trust companies; and all franchises of every kind and nature are to be taxed entirely and exclusively for State purposes. All other property, unless otherwise exempt from taxation, is to be taxed for local purposes, that is for county, city, town, township, and district purposes. The corporations and public utilities here enumerated are to pay annually to the State a tax upon their franchises, roadbeds, roadways, rails, rolling stock, poles, wires, pipes, canals, conduits, rights of way, and other property used in the operation of their business in the State. The tax is to be a fixed constant percentage upon the gross receipts and is to be in lieu of all other taxes and licenses, State, county, and municipal, but such corporation or utility is not to be released from the payment of any amount agreed to be paid or required by law to be paid for any special privilege or franchise granted by the municipality. When such companies are operated partly within and partly without the State, the gross receipts within the State are deemed to include all receipts on business beginning and ending within the State and a proportion, based upon the proportion of the mileage within the State to the entire mileage over which such business

is done, of all receipts on all business passing through, into or out of the State.

The percentage on gross receipts is to be as follows: On all railroad companies, including street railways, 4 per cent; on all sleeping car, dining car, drawing-room car, palace car companies, refrigerator, oil, stock, fruit, and other car-loaning and other car companies, 3 per cent; on all companies doing express business on any railroad, steamboat, vessel or stage line, 2 per cent; on all telegraph and telephone companies, $3\frac{1}{2}$ per cent; on all companies engaged in the transmission or sale of gas or electricity, 4 per cent. Insurance companies are to pay an annual tax of $1\frac{1}{2}$ per cent upon the amount of the gross premiums received upon business done in the State, less return premiums and reinsurance in companies authorized to do business within the same territory, and in addition to this, the proviso is added that any county and municipal taxes paid by the companies on real estate owned by them within the State, is to be deducted from the one and one one-half per cent tax on gross premiums.

The shares of the capital stock of all incorporated banks in the State are to be assessed and taxed by the State board of equalization to the owners or holders in the city or town where the bank is located. The shares of capital stock are subject to an annual tax of 1 per cent on their value. In determining the value of each share of stock, the amount paid in is first considered, and to this is added the shares pro rata of the accumulated surplus and undivided profits. The total value of the capital stock of the bank is found by deducting the value of any real estate other than mortgage interests owned by the bank and taxed for county purposes. The bank itself is required to pay this tax to the State on behalf of the stockholders. The moneyed capital, reserve, surplus, undivided profits, and all other property belonging to unincorporated banks or bankers is to be taxed at the same rate as the shares of stock of incorporated banks. The value of the holdings are to be determined by taking the entire property invested in the business, together with all of the reserve, surplus, and undivided profits, including the good will of the business at their full cash value, and deducting from this the value of any real estate, other than mortgage interests owned by the bank, and taxed for county purposes. It is definitely stated that it is the intention of the proposed law that the moneyed capital and property of unincorporated banks is to be assessed and taxed at the same rate as that of incorporated banks. The word "banks" is defined to include banking associations, savings and loan societies, and trust companies.

All other corporations, excepting those mentioned above, and educational, religious, and charitable corporations, and corporations which are not organized for pecuniary profits, are to pay an annual tax to the State upon their franchises, or if foreign corporations, then upon their right to do business within the State. The amount of the tax depends upon the amount of authorized capital, and is as follows: Up to \$10,000, \$10; \$10,000 to \$20,000, \$15; \$20,000 to \$50,000, \$20; \$50,000 to \$100,000, \$25; \$100,000 to \$250,000, \$50; \$250,000 to \$500,000, \$75; \$500,000 to \$2,000,000, \$100; \$2,000,000 to \$5,000,000, \$200; \$5,000,000 and over, \$250.

All franchises other than those expressly provided for, are to be assessed by the State board of equalization at their actual value and required to pay an annual tax at the rate of 1 per cent, for State purposes. The taxes are levied and assessed in March, payable in June, and computed on the gross earnings and gross premiums of the previous year. All the provisions are made self-executing, but the legislature may make all laws necessary to carry them into effect. No suit, action, or proceeding, is ever to be maintained in any court against the State or any of its officers to have any tax levied under the provisions of this proposed amendment declared invalid, or to prevent the collection of such taxes until the tax has been actually paid. It is only after the payment of the tax that action may be maintained to recover it, if illegally collected.

This proposed amendment has necessitated certain other changes in the provisions relating to revenue and taxation. Very little change is made in the organization of the board of review, but their duties have been somewhat modified. Section 10 of article 13, provided that railroads operating in more than one county were to be assessed by the State board of equalization and their assessed value apportioned to the various subdivisions and districts in proportion to the number of miles of track in each subdivision or district. If the proposed amendment passes, there will be no apportionment of taxes among the local subdivisions, for the entire revenue derived from railroads is to be for State purposes.

Under the present constitution, income taxes may be assessed to and collected from persons, corporations, joint stock associations or companies. The proposed amendment permits the use of the income tax, but a very important exception is made, and that is that corporations which are required to pay the gross receipt tax to the State are to be exempt from the income tax.

Such is a statement, in some detail, of the proposed amendment in

California. It is to be regretted that it was found necessary to attempt to make such a law, so minute in all its details and so like statutory law in all its provisions, a part of the constitution. If it is passed it will be allowed to harden and crystallize into constitutional law, which cannot be easily changed. California can never have any form of corporation taxes other than the gross receipt tax without a constitutional amendment; even the rate as applied to the separate utilities cannot be changed without a vote of the people.

In Missouri an amendment has also been proposed providing for the separation of the sources of State and local revenue. It is much more general than the amendment offered in California, and leaves more to the discretion of the legislature. If the Missouri amendment passes, it will become the duty of the general assembly to separate the sources of State and local revenue and establish local option for the counties and municipalities of the State in the selection of the subjects of taxation. The actual separation of the sources of State and local revenue and the establishment of local option and home rule is to be effected by the discontinuance of the levy of the general property tax upon the real and personal property of the State, from the first of January, 1909. After that date, the revenue required for all State purposes is to be secured from other sources than the general property tax, upon the real and personal property of the State or by an apportionment by the State board of equalization to the counties of the State and the city of St. Louis, of an amount sufficient, when added to the revenue which the State derives from other sources, to furnish all the funds required for State purposes. The general assembly does not give up its authority to levy upon the special subjects of taxation, other than the real and personal property, and when the general assembly does select any special subject for State taxation, it may exempt it from any form of local taxation and may appropriate the proceeds of the tax for State purposes, or apportion it back to the counties of the State and city of St. Louis. The counties and cities of the State may subject to taxation for local purposes the real and personal property within their jurisdiction and may exempt any class of property from taxation, either wholly or by reduction of rate, with the one provision that any tax or exemption from taxation made within any county or city is to be uniform upon the same class of subjects within the given territory. The counties or cities may also levy any form of license tax as provided for by existing laws or charters, if the general assembly has not seen fit to appropriate that source of revenue for State purposes. The taxing power in

counties not under township organization is to be exercised by the county courts; in counties under township organization, by the township board of directors; and in cities, by the municipal assembly, subject to the limitations of their charters.

It will be seen that this gives the general assembly considerable discretionary power. It may tax any form of property for State purposes, except real and personal property, and may even redistribute through the board of equalization, funds to the counties, which the State has derived from other sources. The only power given to the county is the power to tax real and personal property under the general property tax, for if the State wishes, it may even take away the license tax from the local units. On the other hand, if the general assembly sees fit, it may give the localities very great power and permit them to tax nearly every form of property and allow the State to derive its revenue from the counties as apportioned by the State board of equalization. In all probability a midway course will be pursued and the State will derive its revenue from taxes on corporations and public utilities, and leave the localities power to tax certain forms of business and real and personal property under the general property tax.

In Missouri, two other amendments relating to taxation are to be voted on at the same time. One provides that a tax of ten cents on the hundred dollars assessed valuation is to be levied, collected, set apart, and appropriated, in the several counties of the State as a permanent fund for public roads and highways; the other provides that the county courts in counties not under township organization and the township board in counties under township organization may levy a special tax not exceeding twenty-five cents on each one hundred dollars valuation, to be used exclusively for road and bridge purposes.

The present Constitution of South Dakota contains limitations on the rate of taxation for State purposes, and the rate that may be levied for paying the public debt, prevents the classification of property, compels the taxation of moneys and credits, and provides that all taxes shall be uniform on all real and personal property according to the value in money. The amendment as proposed removes these special restrictions and substitutes general provisions in their places. No limitation is placed on the rate of taxation; the proposed provision simply states that the legislature is to provide for raising sufficient revenue to defray the ordinary expenses of the State by an annual tax, and that the public debt is to be paid off by an annual tax sufficient to pay the interest and principal of the debt within ten years. The new provision would also

permit classification; it simply requires that all taxes shall be uniform on the same class of subjects, and levied and collected for public purposes. This would not permit the exemption of moneys and credits, but it would allow their taxation at a lower rate. In addition to this, if the amendment is adopted, the legislature will be compelled to classify incomes as well as inheritances in respect to receipts and provide for a graduated or progressive tax, with such exemptions as it may deem advisable.

In Washington a somewhat similar step has been taken. Provision has been made for the repeal of the first four sections of article 7. These sections provide that all property in the State not exempt under the law of the United States or the State constitution, is to be taxed in proportion to its value; that all property is to be taxed at a uniform and equal rate; that the property of corporations is to be assessed and taxed as nearly as may be by the same methods as the property of individuals; and that the power to tax corporations is not to be surrendered or suspended by any contract or grant to which the State is a party. In place of these sections the simple general provisions are inserted, "The power of taxation shall never be surrendered, suspended, or contracted away. Taxes shall be uniform upon the same class of subjects and shall be levied and collected for public purposes." To this is added a statement of property that is to be exempt from taxation, including the property of the United States, of the State, counties, school districts, and other municipal corporations, and personal property to the amount of \$300 for each head of a family. No attempt has been made to change the remaining sections of the constitution composed of general provisions and restrictions on the legislature.

Minnesota has three minor amendments. The amendment adopted in 1906 exempted all churches and church property. The proposed amendment states that church property in order to be exempt must be used for religious purposes. Minnesota has already made provisions for a road and bridge fund. This law is to be amended so that this sum is to include all moneys accruing from the income derived from investments in the internal improvement land fund, and also any amounts accruing to any State road and bridge fund and the legislature is also authorized to add to this by an annual tax on the property of the State. The third amendment as proposed states that the legislature may provide for the payment by the State of Minnesota for damage to growing crops by hail and wind, and create a fund for that purpose; may impose a tax on lands, the owners of which, at their option,

have listed it with county auditors for that purpose. No payment is to be made except from funds provided in this manner. This will permit the introduction of a plan of State insurance against hail and wind, but it will be entirely optional with the individual property owners whether or not they wish to be taxed for this purpose. In Montana an amendment is offered limiting the rate of taxation of real and personal property for State purposes. If the amendment passes, the rate will be limited to three mills on each dollar of valuation for a time, but when the taxable property in the State amounts to five hundred million, the rate is to be limited to two and one-half mills, and as soon as it reaches eight hundred million, the rate is to be limited to two mills. Utah has a similar amendment relating to taxation for State purposes, which holds that the rate is never to exceed eight mills on the dollar, until the taxable property within the State amounts to four hundred million dollars, and, then the rate is never to exceed five mills, unless the proposition to increase the rate has first been submitted to the qualified electors who have paid a property tax the year previous. Utah has one other minor amendment under consideration. The constitution as it now stands states that mines, mining claims, and their net annual proceeds are to be taxed as provided by law. The proposed amendment would simply substitute the words "by the State board of equalization" in place of "as provided by law."

In Texas, two amendments have been proposed. One relates to a tax for schools, the other to a tax for road and bridge purposes. One-fourth of the revenue derived from the State's occupation taxes and the poll tax of one dollar on male inhabitants, is to be set apart for the benefit of the public free schools, and, in addition to this, there is to be an annual ad valorem State tax, not to exceed twenty cents on the one hundred dollars valuation, for school purposes. The proposed amendment also states that in addition to this, the qualified property tax paying voters of the school district may vote to pay a tax, not to exceed in any one year fifty cents on the one hundred dollar valuation of the property subject to taxation in the district. This limitation does not apply to incorporated cities or towns constituting separate and independent school districts. The other proposed amendment in Texas provides that a majority of the property tax paying voters in any county, or one or more of its political subdivisions, may vote a tax for road and bridge purposes not to exceed thirty cents on the one hundred dollars valuation of property subject to taxation in the county or political subdivision, or may issue bonds not to exceed 20 per cent of the assessed value of the real property in such district.

In Wisconsin, according to a proposed amendment, the State may appropriate money already in the treasury or to be raised by taxation for the construction or improvement of public highways. Section 1 of article 8, reads: "The rule of taxation shall be uniform, and taxes shall be levied upon such property as the legislature shall provide." To this it is proposed to add the following: "Taxes may also be imposed on incomes, privileges, and occupations, which taxes may be graduated and progressive, and reasonable exemptions may be provided."

Such are the amendments as offered in the various States in some detail. If we consider these same amendments from the point of view of subject matter and not according to States, we get the following results: Proposed constitutional amendments providing for the separation of the sources of State and local revenue, California and Missouri; for the substitution of general for specific provisions, South Dakota and Washington; for the gross receipt tax on corporations, California; income tax, South Dakota and Wisconsin; inheritance tax, South Dakota; for a limitation of the tax rate, Montana and Utah; for road and bridge purposes, Minnesota, Missouri, Texas, and Wisconsin; for the repeal of the mortgage tax law, California; for school purposes, Texas; and for damages from wind and hail, Minnesota.

ROBERT ARGYLL CAMPBELL.

Taxation—Constitutional Amendment in Ohio. During the present sessions of the Ohio legislature a joint resolution (H. J. R. No. 75 and S. J. R. No. 53.) has been introduced in both houses providing for an amendment to art. 12, sec. 2. The important part to be amended reads as follows: "Laws shall be passed, taxing by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise; and also all real and personal property, according to its true value in money." This constitutional provision originated in Ohio in 1851, when the present constitution was adopted. Almost an exact copy of this provision may be found in the Arkansas constitution of 1868 (art. 10, sec. 2), since displaced by a new constitution, and in the North Carolina constitution of 1868 and 1876 (art. 5, sec. 3) the constitution of the latter date being still in force. Provisions somewhat similar may be found in other States.

Several attempts have been made to amend that part of sec. 2 of the Ohio constitution quoted above, but every attempt thus far made has failed mainly because of the method required to be used in voting for or against proposed amendments under the Ohio law. In 1906 the gov-